

**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD,
IOWA COMPREHENSIVE[591]**

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455G.4, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to amend Chapter 11, “Claims,” Iowa Administrative Code.

This proposed amendment to Chapter 11 is intended to implement Iowa Code section 455G.9(4), which was amended by 2010 Iowa Acts, House File 2531, section 181, to waive the copayment requirement for innocent landowner claimants where the claim was not filed by an owner or operator of the tank.

Public comments concerning the proposed amendment will be accepted until 4 p.m. on May 20, 2011. Interested persons may submit written or oral comments by contacting the Administrator, Iowa UST Fund, 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266; telephone (515)440-7015.

This amendment mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 455G.9.

The following amendment is proposed.

Amend subrule 11.2(8) as follows:

11.2(8) *Innocent landowner claims.* Consistent with Iowa Code chapter 455G, the board may reimburse an owner of petroleum-contaminated property, or an owner or operator of an underground storage tank located on such property, who, but for this rule because of the date the release was reported, because of the date the claim was filed, because the tank(s) in question was removed from service prior to January 1, 1974, or because the tank(s) in question was removed or permanently closed prior to July 1, 1985, would not be eligible to receive benefits under Iowa Code section 455G.9. Eligible expenses shall not exceed the benefits such claimant would otherwise receive if such claimant were eligible under Iowa Code section 455G.9(1)“a”(1) to (3). All such reimbursements shall be subject to:

- The copayment requirements of Iowa Code section 455G.9(4); claims filed that meet the priority in paragraph “b” or “d” of this subrule shall not incur any copayment for costs incurred after January 1, 2010;

- The requirements of 11.2(1);₂ and
- The available funding and limitations of the innocent landowner fund created by Iowa Code section 455G.21(2)“a” for corrective action.

In the event the innocent landowner fund lacks sufficient funds to pay all claims submitted, innocent landowner claims shall be subject to the following priority:

a. Late filed retroactive claims. For releases reported to DNR on or after January 1, 1984, but prior to May 5, 1989:

- (1) Claims must be filed with the board by February 26, 1994.

- (2) All costs incurred on or after July 10, 1996, must be preapproved by the board to be eligible for reimbursement.

b. Preregulation claims. For releases from petroleum underground storage tanks (USTs) which are not eligible for remedial account benefits under Iowa Code section 455G.9(1)“a”(1) to (3) only

because the USTs were taken out of use prior to January 1, 1974, or permanently closed or removed before July 1, 1985:

- (1) Claims must be filed with the board by December 1, 1997.
- (2) USTs must not have been operated on the site since the time the tanks were taken out of use or permanently closed.
- (3) All costs incurred after July 10, 1996, must be preapproved by the board to be eligible for reimbursement.
- (4) The owner cannot have claimed bankruptcy on or after the date of the reported release.

c. Late filed remedial claims. For releases reported by owners of petroleum-contaminated property as defined under Iowa Code section 455G.9(8) who did not comply with the reporting or filing deadlines identified in this chapter, with priority to those owners who did not have knowledge of the USTs or did not have control over the property:

- (1) Claims must be filed with the board by December 1, 1997.
- (2) The owner or operator must have reported a known release to DNR consistent with DNR requirements.
- (3) The owner did not have knowledge of the UST or of a release impacting the property prior to acquisition of the property if the property was acquired on or after October 26, 1990, or, if the owner did have such knowledge, the acquisition was necessary to protect a security interest.

(4) All costs incurred on or after July 10, 1996, must be approved by the board to be eligible for reimbursement.

- (5) The owner cannot have claimed bankruptcy on or after the date of the reported release.

d. Acquired properties. For releases reported by owners of petroleum-contaminated property as defined under Iowa Code section 455G.9(8) who acquired the petroleum-contaminated property after October 26, 1990, and who did not comply with the reporting or filing deadlines identified in this chapter:

- (1) Claims must be filed with the board by December 1, 1997.
- (2) The owner or operator must have reported a known release to the DNR consistent with DNR requirements.
- (3) The owner could not have been the owner or operator of the UST system which caused the release prior to acquiring the property after October 26, 1990.

(4) All costs incurred on or after December 1, 1996, must be preapproved by the board to be eligible for reimbursement.

(5) For claims submitted under this paragraph, the precorrective action value shall be the purchase price paid by the owner after October 26, 1990.

(6) For claims submitted under this paragraph, the purchase must have been an arm's-length transaction.

- (7) The owner cannot have claimed bankruptcy on or after the date of the reported release.

e. Other innocent landowner claims. Claims for releases submitted to the board after December 1, 1997, which would have been eligible for benefits pursuant to paragraphs "a" through "d" of this subrule if filed by December 1, 1997, will be eligible for reimbursement subject to a first-in, first-out priority and the funding limitations of the innocent landowner fund. The owner must demonstrate that the owner has met all other requirements of this subrule in order to receive benefits.